

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7824 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KANTABEN D/O REVABAHI DHARABHAI CHHARA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of

preventive detention dated 4th September, 1998 made by the Commissioner of Police, Ahmedabad City under the powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a bootlegger within the meaning of Section 2(b) of the Act. As many as 5 offences under the Bombay Prohibition Act are registered against the petitioner; one of which is pending trial and the rest of the four cases are pending investigation. In each of the said cases, substantial quantity of country liquor and the large quantity of liquor wash was recovered from the petitioner. Besides, the police has recorded the statements of two witnesses who have deposed about the bootlegging activities of the petitioner and its adverse effect on public tranquillity and even tempo of life. The petitioner's activities are, therefore, found to be prejudicial to the maintenance of public order.

4. It is submitted that under the representation dated 16th September, 1998 made by one Navnitbhai Babubhai, the petitioner had demanded copies of the reports of the Forensic Science Laboratory in respect of the cases pending investigation. The same, however, have not been furnished to the petitioner. It is, therefore, argued that in absence of such reports, the petitioner could not make an effective representation against the order of detention. The petitioner's constitutional right is thus violated. The continued detention of the petitioner, therefore, is null and void. Though the petition has been contested by both the respondents, the Detaining Authority as well as the State Government by filing their respective affidavits, the above contention is not dealt with. It is argued that the Detaining Authority, while making the order of detention, had not relied upon the reports of the Forensic Science Laboratory, and therefore, the same are not supplied to the petitioner. In the matter of Ranvirsinh Kalyansinh [Spl. Civil Application No. 7490 of 1998, decided on 12th July, 1999], I have taken a view that whether the Detaining Authority relies upon it or not, the report of the Forensic Science Laboratory/Chemical Analyst is a vital document, without which the detenu may not be able to make an effective representation. It is, therefore, imperative for the Detaining Authority to furnish a copy of the said report to the detenu; except in cases where such reports are not yet received or not prepared. In the present case, it is not the case of the Detaining Authority that on the date of detention, such reports

were yet not available. Besides, even after the petitioner's demand vide his representation dated 15th September, 1998, such reports are not furnished to the petitioner, neither the said representation has been answered. The petitioner's right to make an effective representation having thus been infringed, the continued detention of the petitioner is invalid and unlawful.

5. For the reasons recorded hereinabove, the petition is allowed. The impugned order dated 4th September, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless she is required to be detained in some other case, be released forthwith.

Prakash*